

UNITED STATES COURT OF APPEALS DISTRICT OF COLUMBIA CIRCUIT

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AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. No. 24-1128 2. DATE DOCKETED: 5/10/2024
3. CASE NAME (lead parties only) Electric Generators for a Sensible Transition v. U.S. Environmental Protection Agency
4. TYPE OF CASE: ☒ Review ☐ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ☐ Yes ☒ No
If YES, cite statute _____
6. CASE INFORMATION:
 - a. Identify agency whose order is to be reviewed: U.S. Environmental Protection Agency
 - b. Give agency docket or order number(s): EPA-HQ-OAR-2023-0072; 89 Fed. Reg. 39,798
 - c. Give date(s) of order(s): May 9, 2024
 - d. Has a request for rehearing or reconsideration been filed at the agency? ☐ Yes ☒ No
If so, when was it filled? _____ By whom? _____
Has the agency acted? ☐ Yes ☐ No If so, when? _____
 - e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
See Attachment 6(e)
 - f. Are any other cases involving the same underlying agency order pending in this Court or any other?
☒ Yes ☐ No If YES, identify case name(s), docket number(s), and court(s)
See Attachment 6(f)
 - g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
☐ Yes ☒ No If YES, give case name(s) and number(s) of these cases and identify court/agency: _____
 - h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? ☐ Yes ☒ No If YES, provide program name and participation dates. _____

Signature /s/ Allison D. Wood

Date June 14, 2024

Name of Counsel for Appellant/Petitioner Electric Generators for a Sensible Transition

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ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

Attachment 6(e): Basis for Petitioner's Standing

Petitioner Electric Generators for a Sensible Transition seeks judicial review of a final action of the U.S. Environmental Protection Agency (“EPA”) entitled “New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule.” 89 Fed. Reg. 39,798 (May 9, 2024) (“Final Rule”). The Final Rule revises the new source performance standards regulating greenhouse gas emissions from new and reconstructed fossil fuel-fired combustion turbine electric generating units and from fossil fuel-fired steam generating units that undertake a large modification under section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b). The Final Rule also establishes emission guidelines under section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), for states to follow in developing, submitting, and implementing state plans to establish performance standards to limit greenhouse gas emissions from existing fossil fuel-fired steam generating units. In the Final Rule, EPA also repealed the Affordable Clean Energy Rule.

Petitioner Electric Generators for a Sensible Transition is an *ad hoc* coalition of electric generating companies and a national trade association of electric generating companies (the American Public Power Association) that have joined

together for the purpose of filing this petition for review. The members of the *ad hoc* coalition own and operate electric generating units that are subject to the Final Rule and must comply with the emission limitations established in the Final Rule for new, reconstructed, and modified sources. Members of the Electric Generators for a Sensible Transition also own and operate electric generating units that will be subject to the performance standards that states will set in accordance with the emission guidelines promulgated by EPA in the Final Rule.

Compliance with the Final Rule will injure members of the Electric Generators for a Sensible Transition in numerous ways, including: (1) requiring the premature retirement of their existing coal-fired electric generating units; (2) restricting their ability to construct and operate new baseload natural gas-fired generation, which will be needed to replace the baseload generation lost by the premature retirement of the coal-fired units; (3) imposing significant increased costs to construct replacement generation; (4) causing significant operational challenges; and (5) threatening their ability to ensure a reliable and affordable supply of electricity.

Petitioner Electric Generators for a Sensible Transition asserts that the Final Rule violates the Clean Air Act and is otherwise arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. A decision in Petitioner's favor would redress its members' injuries.

Because the members of Petitioner Electric Generators for a Sensible Transition have standing to challenge the Final Rule in their own right, Petitioner has standing. *See Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 341-45 (1977).

Attachment 6(f): Other Cases Involving the Same Underlying Agency Order

This Court has consolidated the following cases, each of which challenges the Final Rule:

- *State of West Virginia, et al. v. EPA*, No. 24-1120 (D.C. Cir.) (lead case)
- *State of Ohio, et al. v. EPA*, No. 24-1121 (D.C. Cir.)
- *National Rural Electric Cooperative Association v. EPA*, No. 24-1122 (D.C. Cir.)
- *National Mining Association, et al. v. EPA*, No. 24-1124 (D.C. Cir.)
- *Oklahoma Gas and Electric Company v. EPA*, No. 24-1126 (D.C. Cir.)
- *Electric Generators for a Sensible Transition v. EPA*, No. 24-1128 (D.C. Cir.)
- *United Mine Workers of America, AFL-CIO v. EPA*, No. 24-1142 (D.C. Cir.)
- *International Brotherhood of Electric Workers, AFL-CIO v. EPA*, No. 24-1143 (D.C. Cir.)
- *International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO v. EPA*, No. 24-1144 (D.C. Cir.)
- *Midwest Ozone Group v. EPA*, No. 24-1146 (D.C. Cir.)
- *Edison Electric Institute v. EPA*, No. 24-1152 (D.C. Cir.)
- *NACCO Natural Resources Corporation v. EPA*, No. 24-1153 (D.C. Cir.)
- *Idaho Power Company v. EPA*, No. 24-1155 (D.C. Cir.)

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2024, I filed the foregoing Docketing Statement with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Allison D. Wood

Allison D. Wood